



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Charles R. Spies, Esq.
Clark Hill PLC
1250 Eye Street, NW, Suite 900
Washington, D.C. 20005

DEC 17 2010

RE: MURs 6295 and 6307
Sue Lowden for US Senate and
Bob Beers, in his official capacity as
treasurer
Sue Lowden

Dear Mr. Spies:

On May 26, 2010, the Federal Election Commission notified your clients, Sue Lowden for US Senate and Bob Beers, in his official capacity as treasurer ("Committee") and Sue Lowden, of a complaint, MUR 6295, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on December 14, 2010, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

On June 8, 2010, the Federal Election Commission notified your clients, the Committee and Sue Lowden, of a complaint, MUR 6307, alleging violations of certain sections of the Act, and regulations promulgated pursuant to the Act. A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on December 14, 2010, voted to dismiss the allegation that the Committee violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.9(e)(2). Furthermore, the Commission found that there is no reason to believe that the Committee violated 2 U.S.C. § 434b. The Commission also found that there is no reason to believe that Sue Lowden violated 2 U.S.C. § 441a(f) or 11 C.F.R. § 102.9(e)(3), and closed the file. The Factual and Legal

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Analysis, which more fully explains the Commission's decision, is enclosed for your information.

If the candidate or his or her authorized committee receives contributions that are designated for use in connection with the general election before the date of the primary election, the committee's records must demonstrate that prior to the primary election, the committee's recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made. 11 C.F.R. § 102.9(e)(2). Further, no political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of section 441. 2 U.S.C. § 441a(f). In regard to MUR 6307, the Commission cautions the Committee to take steps to ensure that its conduct is in compliance with the Act and the Commission's Regulations.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to these matters, at (202) 694-1650.

Sincerely,



Susan L. Lebeaux

Acting Deputy Associate General Counsel

Enclosure

Factual and Legal Analysis for MURs 6295 and 6307

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Sue Lowden for US Senate and Bob Beers,
in his official capacity as treasurer
Sue Lowden

MURs: 6295 and 6307

I. INTRODUCTION

These matters were generated by a complaint filed with the Federal Election Commission by Samuel Lieberman, Chairman of the Nevada State Democratic Party. In MUR 6295, complainant alleges that Carl Giudici made an excessive contribution to Sue Lowden and Sue Lowden for US Senate and Bob Beers, in his official capacity as treasurer, ("Committee") by providing what complainant described as a "luxury recreational bus" ("recreational vehicle") for campaign use, which the Committee accepted and failed to accurately report. In response, the Committee states that Giudici and the Committee entered into a lease agreement for the recreational vehicle in January 2010 that provides that the Committee, as lessee, will not acquire any legal or equitable interest in the recreational vehicle, but has the right to use and operate the vehicle at a rate of \$95 per day during the terms of the lease. The Committee also states that a rental rate of \$95 per day is the fair market value for a vehicle of similar year, model and condition to the vehicle being leased. Based on the available information and in furtherance of the Commission's priorities and resources relative to other pending matters, the Commission exercises its prosecutorial discretion and dismisses the allegations that the Committee or Sue Lowden accepted an excessive contribution, or failed to accurately report the full value of a contribution. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

In MUR 6307, complainant alleges that the Committee spent \$18,000 in general election contributions on the primary election. The Committee responds that it did not knowingly spend

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general election funds, but spent them as the result of a cash-flow accounting error, and that it returned all general election funds to the contributors within three weeks after the primary election ended. Based on the Committee's assertions, and no information to the contrary, the Commission dismisses the allegation that the Committee violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.9(e)(2), and sends a cautionary letter. *See Heckler v. Chaney*, 470 U.S. 821 (1985). In regard to the allegation that the Committee failed to report the spending of the general election funds, the Committee reported these expenditures in the various disbursements disclosed on its 2010 Pre-Primary Report. Therefore, there is no reason to believe that the Committee violated 2 U.S.C. § 434b. There is also no reason to believe that Sue Lowden violated the Act. Finally, the Commission closes the files in both MURs 6295 and 6307.

II. MUR 6295

A. Factual Background

The complaint and supplemental complaint ("complaint") in MUR 6295 allege that Sue Lowden and the Committee accepted an excessive contribution from Carl Giudici by failing to report the full value of the Committee's use of a recreational vehicle leased from Giudici. Specifically the complaint, citing an attached newspaper article in the *Las Vegas Sun*, dated May 17, 2010, alleges that the Committee promoted the Lowden campaign by touring the state in the recreational vehicle and, at a cost of \$6,800, affixed the campaign logo on the vehicle along with a picture of Sue Lowden and other campaign graphics.¹ According to the newspaper article, Giudici bought the tan 2001 Monaco in May 2009, and a few months later, the Committee began using the vehicle. The article also reports that the Committee's attorney initially stated that the Committee did not pay Giudici on the days when Lowden was not using the bus to tour the state,

¹ See J. Patrick Collican, *Danny Tarkaninan: Sue Lowden Breaking Campaign Law By Accepting donating RV*, LAS VEGAS SUN, May 17, 2010.

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but the campaign reportedly later retracted this assertion. The complaint alleges that based on the news article, the arrangement between the Committee and Giudici is unclear, because originally, Sue Lowden reportedly said a supporter had donated the vehicle to her, but later reportedly stated that Giudici owned the vehicle and was leasing it to the Committee. According to the news article, records of the Nevada Department of Motor Vehicles ("Nevada DMV") list Lowden as a title-owner of the vehicle, and the campaign's attorney reportedly stated that Sue Lowden was listed on the vehicle registration for insurance purposes. The complaint, citing a May 20, 2010 Associated Press report, alleges that Lowden also reportedly stated that she was on the vehicle title for registration purposes, but that the Nevada DMV reportedly maintains that a person cannot be listed on a Nevada vehicle title without being considered its owner and it does not recognize private leases to determine legal ownership. *See*

<http://www.nevadaappeal.com/apps/pbcs.dll/article?AID=/20100520/NEWS/100519450/1070&Parentprofile=1058&template=printart>. The complaint alleges that regardless of how the transaction is structured, the Committee has not reported the full value of its use of the recreational vehicle. According to the complaint, the market rental rate for the vehicle in question could be as high as \$4,500 per week, but that the Committee reported in-kind contributions of only \$2,200 from Carl Giudici and \$1,885 from Elsie Giudici to use the vehicle in November 2009. The complainant alleges renting the vehicle below the fair market value results in the Committee accepting an excessive contribution from Giudici.

In response, Sue Lowden and the Committee state that Giudici did not donate the recreational vehicle to the Committee, and Ms. Lowden should have described the pre-lease transactions as in-kind contributions instead of a donation.² According to the response, Carl and

² Carl Giudici did not respond to the complaint.

Elsie Giudici offered the Committee the use of their 2001 Monaco Executive Motor Home for campaign purposes, and on January 12, 2010, Carl Giudici and the Committee entered into a lease agreement, which is attached to the Committee's response. The Committee points out that the lease agreement provides that the Committee, as lessee, will not acquire any legal or home lease equitable interest in the recreational vehicle, but will have the right to use and operate the vehicle at a rate of \$95 per day during the ten-month term of the lease.

Sue Lowden and the Committee cite to an article in the *Las Vegas Review Journal*, attached to their response, reporting that its survey of Las Vegas rental rates for similar new luxury vehicles determined that the rental rate for new vehicles ranged from fifty dollars per day in winter to several hundred dollars per day in summer high season. Given that the recreational vehicle leased by the Committee was ten years old and in need of improvements, the response contends that the \$95 rental rate per day is well within the fair market value range. The response further states that the Committee made needed capital improvements to the recreational vehicle in February 2010 totaling \$11,082, inuring to the benefit of the owner, and, as agreed to with Giudici, reported those improvements on the Committee's April 2010 Quarterly Report as in-kind lease payments. At a rate of \$95 per day, the capital improvements totaling \$11,082 would represent 116 days ($\$11,082/\$95 = 116.65$), or approximately four months' rent. The response acknowledges that before executing the lease agreement, Giudici allowed the Committee to use the recreational vehicle, which the Committee reported as in-kind contributions of \$2,200 from Carl Giudici and \$1,885 from Elsie Giudici on its 2009 Year-End Report.³ On January 28, 2010, the Committee also paid the registration fee of \$1,664 for the vehicle to the Nevada DMV.⁴

³ The disclosure reports also indicate that Carl Giudici made a cash contribution of \$200 to the Committee on August 24, 2009, and Elsie Giudici made an in-kind contribution of \$475 for vehicle rental to the Committee on January 26, 2010. The disclosure reports that include in-kind contributions for the vehicle rental do not provide

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In addition, although contending the issues concerning whether the Nevada DMV properly registered the recreational vehicle are beyond the jurisdiction and authority of the Federal Election Commission, the response states that the Nevada DMV accepted the private lease agreement between Giudici and the Committee to register and title the recreational vehicle. However, because of the controversy whether the Nevada DMV should have allowed a vehicle's lessee to be listed as an owner, Giudici sold the recreational vehicle to Lee Brothers RV Leasing on May 20, 2010. The Committee then entered into a lease agreement with Lee Brothers on May 28, 2010, and paid that firm \$2,036 on May 24, 2010.⁵ The response concludes that because it had a legitimate lease agreement with Giudici and paid fair market value to rent the vehicle, the Commission should dismiss this matter.

B. Legal Analysis

No person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office, which in the aggregate, exceed \$2,400. 2 U.S.C. § 441a(a). The contribution limit of \$2,400 was in effect for the 2010 election cycle. A contribution is defined to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A). The term, "anything of value" includes in-kind contributions, and, unless specifically exempted, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a

information on how the Committee determined the rental rate of \$95 per day, nor do they indicate if the \$475 contribution was for one day or multiple days' use of the vehicle.

⁴ Although not referenced in the response, the Committee's 2010 Pre-Primary Report discloses that the Committee also paid \$3,393.39 for "RV repairs" on April 11, 2010.

⁵ While the Committee did not submit a copy of its lease with Lee Brothers, the payment of \$2,036 at the rental rate of \$95 per day would cover 21 days ($\$2,036/\$95 = 21.43$), which would extend beyond the June 8, 2010 primary election, which Lowden lost.

contribution. 11 C.F.R. § 100.52(d)(1). The usual and normal charge for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution, and the usual and normal charge for services is the hourly or piecework charge for the services at a commercially reasonable rate at the time the services were rendered.

11 C.F.R. § 100.52(d)(2). No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of section 441. 2 U.S.C. § 441a(f). Each treasurer of a political committee is required to file reports of receipts and disbursements in accordance with 2 U.S.C. § 434(a). Each report shall disclose the total amount of receipts and disbursements for the reporting period and the calendar year. 2 U.S.C. § 434(b)(2) and (4).

While it is not clear how the Committee determined the rental rate of \$95 per day, the *Las Vegas Review Journal* article, attached to the Committee's response, reported that its survey of several Las Vegas rental companies showed that a new luxury recreational vehicle, of the same make and model as the vehicle leased by the Committee, would range from a low of \$50 a day in winter and up to several hundred dollars a day in the summer high season. Several Internet websites that appear to specialize in renting new, or relatively new, recreational vehicles indicate that rental rates for such recreational vehicles in Las Vegas are several hundred dollars per day.

The recreational vehicle the Committee leased was, during the time-period alleged in the complaint, owned by private individuals, approximately ten years old, had a ten-month lease, and needed substantial capital improvements, which the Committee made and apparently set off against amounts it owed the lessor, and which inured to the owner of the vehicle. These factors may warrant a discount to the rental rate charged for short-term rentals of presumably new, or newer vehicles in relatively good repair. For these reasons and in furtherance of the

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Commission's priorities and resources relative to other pending matters, the Commission exercises its prosecutorial discretion and dismisses the allegations that Sue Lowden or the Sue Lowden for US Senate and Bob Beers, in his official capacity as treasurer, accepted an excessive contribution from Carl Giudici in violation of 2 U.S.C. § 441a(f), or failed to accurately report the full value of a contribution in violation of 2 U.S.C. § 434(b). *See Heckler v. Chaney*, 470 U.S. 821 (1985). The Commission closes the file in MUR 6295.

III. MUR 6307

A. Factual Background

The complaint, in MUR 6307, based on a May 27, 2010 article in the *Las Vegas Review Journal*, attached to the complaint, alleges that Sue Lowden and Committee spent approximately \$18,000 in funds raised for the general election on the primary election. Specifically, the complaint alleges, based on the news article, that the Committee reported cash-on-hand of \$209,325, all of which was designated for the general election, but admitted that it had raised \$227,063 in general election funds. The Committee reported these figures on its Pre-Primary Report dated May 26, 2010. The primary election, which Ms. Lowden lost, was held on June 8, 2010. The complaint also alleges that the Committee failed to report spending \$18,000 in general election funds.

In its response to the complaint, the Committee admits that it spent approximately \$18,000 in general election funds before the primary election on June 8, 2010, even though it had a policy in place to separate general election funds from primary election funds, but that it returned all general election funds to the contributors within three weeks after the primary election ended. The Committee maintains that the general election funds spent for the primary election "were not knowingly spent, but instead were a result of a cash-flow accounting error."

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The Committee additionally states that since it returned the general election donations to donors within weeks of the primary election, this accounting error did not confer a benefit upon the Committee. Accordingly, the response requests that the Commission exercise its prosecutorial discretion to dismiss this matter.

B. Legal Analysis

If the candidate or his or her authorized committee receives contributions that are designated for use in connection with the general election before the date of the primary election, the committee's records must demonstrate that prior to the primary election, the committee's recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made. 11 C.F.R.

§ 102.9(e)(2). If a candidate is not a candidate in the general election, any contribution made for the general election shall be refunded to the contributors or redesignated or reattributed, as appropriate in accordance with Commission regulations. 11 C.F.R. § 102.9(e)(3); *see also* 11 C.F.R. § 103.3(b)(3) (if a redesignation or reattribution is not obtained, the treasurer shall, within sixty days, refund the contribution to the contributor). Further, no candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of section 441. 2 U.S.C. § 441a(f). Each treasurer of a political committee is required to file reports of receipts and disbursements in accordance with 2 U.S.C. § 434(a). Each report shall disclose the total amount of receipts and disbursements for the reporting period and the calendar year. 2 U.S.C. § 434(b)(2) and (4).

The Committee admits that it spent approximately \$18,000 in general election funds during the primary election period, due to a cash-flow accounting error. Thus, it violated 11 C.F.R. § 102.9(e)(2), because it failed to demonstrate that the Committee's recorded cash on

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hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made. Further, by spending general election funds for the primary, the Committee may have accepted excessive contributions in violation of 2 U.S.C. § 441a(f). However, the Committee maintains that it had appropriate policies in place to separate primary and general election funds, and attributes the violation, which involved less than one percent of its general election funds, to a cash-flow accounting error. There is no information to the contrary. In addition, the Committee refunded all contributions to the general election, including those that were spent during the primary, before the sixty-day deadline after the primary election ended. Under these circumstances, the Commission dismisses the allegation that Sue Lowden for US Senate and Bob Beers, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f) or 11 C.F.R. § 102.9(e)(2) and sends a cautionary letter. *See Heckler v. Chaney*, 470 U.S. 821 (1985). With regard to the allegation that the Committee failed to report the spending of general election funds during the primary, the Committee reported these expenditures in the various disbursements that it disclosed on its 2010 Pre-Primary Report. Thus, the Committee reported all disbursements as required by 2 U.S.C. § 434(b). Therefore, there is no reason to believe that Sue Lowden for US Senate and Bob Beers, in his official capacity as treasurer, violated 2 U.S.C. § 434(b).

As there is no information that the candidate was personally involved in the activity at issue in MUR 6307, there is no reason to believe that Sue Lowden violated 2 U.S.C. § 441a(f) or 11 C.F.R. § 102.9(e)(2). Finally, the Commission closes the file in MUR 6307.

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